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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,410	08/08/2001	Christopher S. Weaver	9503-002-64 CONT	1708

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Supervisor, Patent Prosecution Services
PIPER MARBURY RUDNICK & WOLFE LLP
1200 Nineteenth Street, N.W.
Washington, DC 20036-2412

EXAMINER

VO, CLIFF N

ART UNIT	PAPER NUMBER
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2676

DATE MAILED: 01/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/923,410

Applicant(s)

WEAVER, CHRISTOPHER S.

Examiner

CLIFF N. VO

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-34 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 28-32 and 34 is/are allowed.
- 6) ☒ Claim(s) 15-26, 32 and 33 is/are rejected.
- 7) ☒ Claim(s) 27 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

1. Applicant is advised that the Notice of Allowance mailed is vacated. If the issue fee has already been paid, applicant may request a refund or request that the fee be credited to a deposit account. However, applicant may wait until the application is either found allowable or held abandoned. If allowed, upon receipt of a new Notice of Allowance, applicant may request that the previously submitted issue fee be applied. If abandoned, applicant may request refund or credit to a specified Deposit Account.
2. The indicated allowability of claims 15-26 and 32-33 is withdrawn in view of the newly discovered reference(s) to Weaver (U.S. Patent No. 6,404,426). Rejections based on the newly cited reference(s) follow.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 15-21, 25-26 and 32-33 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims

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15-16 and 20-22 of the U.S. Patent No. 6,404,426. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the reason as follows.

As per claim 15, the U.S. Patent No. 6,404,426's claim 16 discloses a method comprising "rendering a virtual model in three dimensions" (col.9, line 23), "the virtual model having changeable characteristics, receiving input for varying the characteristics of the virtual model, varying the characteristics of the virtual model in response to the received input" (col.9, lines 33-39, i.e., changing sizes and proportion of the virtual model can be understood as varying the characteristics of the virtual model as now claimed), "rendering the virtual fabric in three dimensions, the virtual fabric to be displayed on the virtual model" (col.9, lines 24-25 and 41-42), moving the virtual model (col.10, lines 1-3), wherein the fabric qualities including at least one from a group consisting of fabric drape, fabric flow, fabric elasticity, and fabric reflectivity (col.9, lines 25-29). It should be noticed that U.S. Patent No. 6,404,426's claim 16 fails to teach *moving* the virtual model with the *fitted* virtual fabric. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to recognize that the steps of "displaying the selected three dimensional garment on the model" (col.9, lines 41-42) and "accepting a selection a motion to be applied to the model" (col.10, lines 1-2) would have included the step "moving the virtual model with the fitted virtual fabric" as now claimed in claim 15 of the instant application since the patented claim 16 clearly teaches a method for displaying garments for a virtual model at col.9, lines 21-22 in order to provide a view of how the fabric fits

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on the virtual model as claimed in U.S. Patent No. 6,404,426 at col.9, lines 41-42.

As per claim 16, the features as now claimed was taught by the patented claims 20 and 21.

As per claim 17, the patented claim 15 further teaches wherein the virtual fabric is rendered in the dimensions via input of a plurality of measurements of an actual garment (col.9, lines 31-33).

As per dependent claims 18-19, it should be noticed that the patented claim 15 fails to implicitly teach wherein the virtual model/fabric rendered using information stored in a mesh format. However, such a technique of rendering/generating a three dimensional object utilizing a mesh was commonly well-known in the computer art at the time the invention was made. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a mesh in rendering the virtual model/fabric as now claimed in order to make it more efficient since it would have provided a smooth surface for the 3D image by means of division within a mesh.

As per claims 20-21, the patent claim 22, further teaches a step of receiving a selection to dynamically rotate the virtual model with the fitted virtual fabric at col.10, lines 22-24.

As per dependent claims 25-26, the patented claim 15 further teaches wherein the fitted virtual fabric includes environment effects resulting from at least one selected from a group consisting of gravity, deformation, light, wind, fabric translucent, reflectivity and a fabric texture (col.9, lines 27-30).

Due to the similarity of claims 32-33 to claims 15 and 18-21, they are rejected under a similar rationale.

3. Claims 22-24 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 16 of U.S. Patent No. 6,404,426 in view of Brett (U.S. Patent No. 6,026,179).

As per dependent claims 22-24, it should be noticed that the patented claim 16 of the U.S. Patent No. 6,404,426 fails to teach a step of displaying a background environment such as wind effects within the presentation wherein the model is located. However, such a technique of selecting and displaying a background environment which includes a special effect such as wind effects simultaneously with displaying a foreground object, i.e., model, on the displaying screen was commonly well known in the art at the time the invention was made. Brett discloses another computer system for displaying an animation sequence including a step of selecting/displaying a background environment which includes a special effect such as wind effects simultaneously with displaying a foreground object, i.e., model, on the displaying screen as now claimed (col.23, lines 33-46). It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement a step of displaying a background environment which includes a special effect such as wind effects simultaneously with displaying a foreground object, i.e., model, on the displaying screen in order to make it more efficient since it would have produced a representation more realistic, e.g., model's hair waving corresponding to the wind blows.

Allowable Subject Matter

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4. Claims 28-31 and 34 are allowed.
5. Claim 27 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CLIFF N. VO whose telephone number is 571-272-7651. The examiner can normally be reached on 2nd Monday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MATTHEW BELLA can be reached on 571-272-7778. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MATTHEW C. BELLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

CLIFF N VO
Examiner
Art Unit 2676

